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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 471

ILLINOIS COMMERCE COMMISSION, JOHN D. BIGGS, WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE AND VAL J. WASHINGTON, COMMISSIONERS OF THE ILLINOIS COMMERCE COMMISSION, AND DANIEL F. RICE & COMPANY, A PARTNERSHIP,

Petitioners,

vs.

BOARD OF TRADE OF THE CITY OF CHICAGO, A CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

IRVIN ROOKS,
LEE A. FREEMAN,

Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice, and William F. Rowley, doing business under the firm name of Daniel F. Rice & Co., a partnership.

CHAMPLIN-SHEALY COMPANY, CHICAGO

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STATEMENT.

This petition is filed on behalf of Daniel F. Rice & Company, a partnership (hereinafter referred to as "Rice"), for the issuance of a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit, reversing orders of the District Court of the United States for the Northern District of Illinois, Eastern Division, which granted motions to strike and dis-

miss a bill of injunction seeking to restrain members of the Illinois Commerce Commission and Rice from proceedings to hearings in a certain cause instituted by Rice before the Illinois Commerce Commission.

On July 28, 1944, Rice, a grain commission merchant, on behalf of its customers as grain producers, dealers and processors, filed a complaint with the Illinois Commerce Commission against public grain warehousemen in the Chicago terminal area, and against the Board of Trade of the City of Chicago (hereinafter "Board of Trade"). The complaint charged these warehousemen with maintaining excessive, unreasonable and discriminatory rates and practices, with operating inadequate and unsafe facilities and service, with abandoning public service at will, and with numerous violations of specific state statutory provisions and of a constitutional requirement.[1]

The Board of Trade was joined as a defendant to the end that the improvement sought in warehousing practices could be in part achieved through Board of Trade rules and regulations. (Rec. 10-19)

A motion to dismiss the proceeding was filed with and denied by the commission, and the cause set for hearing commencing October 24, 1944. (Rec. 20-4) Thereupon, the Board of Trade filed a bill in the District Court of the United States to enjoin members of the commission and Rice from further prosecuting the proceeding before the commission. The injunction was sought on the ground that the federal government, by the Commodity Exchange Act (Tit. 7 U.S.C., Sec. 1 *et seq.*), has "completely occupied and

[1] The grain warehousemen sought an injunction in a separate proceeding. The injunction was denied by the District Court, but that court's order was reversed by the Court of Appeals. We are also seeking review of the Court of Appeals judgment in that companion case by separate petition simultaneously filed in *Illinois Commerce Commission, et al.*, v. *Great Lakes Elevator Corporation, et al.* The issues presented by that phase of the case are fully set forth in our companion petition for writ of certiorari.

preempted the field of regulation of boards of trade", and thereby superseded and nullified the Constitution and all laws of Illinois or regulations of the Illinois Commerce Commission with respect to the operation of the Board of Trade. (Rec. 6, 7) Motions to strike the complaint and dismiss the proceeding were filed by the Attorney General of Illinois and by Rice. (Rec. 212-20) Such motions were allowed, and an order was entered by the District Court on June 26, 1945, dismissing the complaint. (Rec. 223-5)

Appeals were taken to the Circuit Court of Appeals for the Seventh Circuit, and on June 7, 1946, that court reversed the District Court with directions to overrule the motions to strike the complaint.

Jurisdiction.

The judgment of the Circuit Court of Appeals for the Seventh Circuit sought to be reviewed was entered on June 7, 1946. (Rec. 242) The jurisdiction of this court is invoked under Section 240 of the Judicial Code of the United States, as amended. (Tit. 28 U.S.C., Sec. 347) The validity of Section 194b of the Illinois Grain Warehouse Act is attacked on the ground of alleged repugnance to a federal statute.

The federal statute involved is the Commodity Exchange Act. The state provision which is sought to be invalidated is Section 194b of the Illinois Grain Warehouse Act (Ill. Rev. Stats. (1945) Ch. 114, Sec. 194b), which reads as follows:

> "No rule or regulation of any board of trade or grain exchange which relates to the warehousing of grain in any public grain warehouse, or which relates to the custody of grain in any private warehouse, or the use or negotiation of custodian's receipts for such grain, shall be or become operative until such rule or

regulation is approved by the Illinois Commerce Commission, and the Illinois Commerce Commission may adopt and promulgate reasonable rules and regulations consistent with the provisions of this Act for the purpose of making this Act effective.

Questions Presented.

1. Is the state requirement of prior state commission approval of rules and regulations of the Board of Trade which relate to the warehousing or custody of grain, in irreconcilable conflict with the limited and circumscribed control of boards of trade provided by the Commodity Exchange Act?

2. The Circuit Court of Appeals for the Seventh Circuit erred in holding that by the Commodity Exchange Act Congress intended and expressly provided for exclusive federal control and authority over the Board of Trade.

3. The Circuit Court of Appeals for the Seventh Circuit erred in holding that Congress, by the Commodity Exchange Act, has invaded the precise field occupied by the Illinois Commerce Commission by reason of Section 194b of the Illinois Grain Warehouse Act, and has rendered that state authority inoperative.

4. The Circuit Court of Appeals for the Seventh Circuit erred in reversing the order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Reasons for Granting the Writ.

The questions of law here presented are of great public importance. Federal questions of substance are presented which have not heretofore been determined by this court.

This is a case of first impression. No court has previously passed upon the validity of state regulation of rules of boards of trade in the face of claimed repugnance to the Commodity Exchange Act.

The Board of Trade is one of the commodity exchanges which has been designated by the Secretary of Agriculture under the Commodity Exchange Act as a contract market. Limited controls over excessive speculation and manipulation of trading in commodities and futures on the Board of Trade are thus achieved. The Board of Trade, however, promulgates rules and regulations establishing warehousing standards and practices. For example, Rule 1620 fixes maximum storage rates. (Rec. 155). Rule 1626 requires warehouses to provide modern improvements and appliances. (Rec. 156) Rule 1621A provides for guarantees of warehouse receipts by affiliated companies. (Rec. 155) Rules 1230 through 1242 provide regulation of the custody of grain in private elevators. (Rec. 139-143) The Board of Trade thus achieves a degree of regulation apart from government. These rules and regulations are not subject to the approval or control of the federal administrative agencies acting under the Commodity Exchange Act. The Illinois Commerce Commission, a state public utility regulatory body, by Section 194b of the Illinois Grain Warehouse Act, has been delegated specific authority with respect to rules and regulations so promulgated. That section provides in part that no rule of the Board of Trade:

> "• • • which relates to the warehousing of grain in any public grain warehouse, or which relates to the custody of grain in any private warehouse, or the use or negotiation of custodian's receipts for such grain, shall be or become operative until such rule or regulation is approved by the Illinois Commerce Commission, • • •."

If the judgment of the Circuit Court of Appeals is allowed to stand, the state control of such rules and regulations as an exercise of police power would be invalidated, without judicially raising comparable authority at the federal level. Substantial questions involving the interrelationship and harmonization of state and federal authority are here involved.

The Circuit Court of Appeals for the Seventh Circuit has misconceived the doctrine of supersedure and the scope and import of the Commodity Exchange Act. No demonstration of irreconcilable conflict was made. The judgment was reached on the ground of occupancy of the precise field, although the federal statute does not require approval of warehousing rules of the Board of Trade, and such federal authority has not been claimed by counsel.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit should be granted.

IRVIN ROOKS,
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Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice, and William F. Rowley, doing business under the firm name of Daniel F. Rice & Co., a partnership.

September 4, 1946.

BRIEF IN SUPPORT OF PETITION.

The Attorney General of Illinois has prepared a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, and a brief in support thereof, and has filed that petition and brief in this cause.

We are privileged to have read the petition and brief of the Attorney General, and we hereby adopt the brief thus filed as our argument in support of the granting of this petition.

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